

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1128-02
Bill No.: Perfected HS for HB 381
Subject: Tobacco and Tobacco Products; Revenue Dept.; Crimes and Punishment;
Attorney General; Highway Patrol
Type: Original
Date: February 28, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$867,794)	(\$924,139)	(\$948,061)
Total Estimated Net Effect on <u>All</u> State Funds	(\$867,794)	(\$924,139)	(\$948,061)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Department of Public Safety (DPS)** state the proposed legislation does not provide for a tobacco registration fee. DPS further assumes it will require 1 FTE Tobacco Program Manager (\$49,140); 6 FTE Agents (\$39,048); 3 FTE Clerk IV (\$25,956); and the related equipment and expense for each position, to enforce and administer the tobacco provisions provided by this act.

Officials of the **Missouri State Highway Patrol (MHP) and the Attorney General's Office (AGO)** state this proposal would have minimal or no fiscal impact to their agencies and any costs involved could be absorbed.

In a similar proposal, officials of the **Office of State Courts Administrator (CTS)** and the **Office of Prosecution Services (OPS)** stated this proposal would have minimal or no fiscal impact to their agencies and any costs involved could be absorbed.

Officials from the **Office of Administration, Budget and Planning (BAP)** assumed this legislation should not result in additional costs or savings to BAP. There could be impact on total state revenue.

In a similar proposal, officials from the **Office of the State Public Defender (SPD)** assumed an additional 1,000 indigent persons will require representation in cases where they have been charged for possession of fake or altered identification cards. SPD assumes it will require 2 FTE Assistant Public Defenders, .75 FTE Paralegal Investigator, .50 FTE Legal Secretary, and the related equipment and expense for each position, to represent the indigent accused. SPD assumes existing staff could provide representation for those 1-5 cases arising where indigent persons were charged with fraudulent tax stamp utilization.

Officials from the **Department of Corrections (DOC)** assume this proposal would have zero to minimal fiscal impact to its agency. DOC states the need for additional capital improvements is not anticipated at this time. However the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity.

Currently, DOC cannot predict the number of new commitments which may result from the creation of the offenses outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of DOC due to the provisions of this legislation, DOC will incur a corresponding increase in operational cost either through incarceration (FY99 average of \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (FY99 average of \$2.47 per offender, per day).

ASSUMPTION (Continued)

The following factors contribute to DOC's minimal assumption: DOC assumes the narrow scope of the crime will not encompass a large number of offenders; the low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence; and the probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials of the **Department of Revenue (DOR)** state this legislation, as written, would create a felony for the sale or distribution of gray market cigarettes. DOR is to revoke or suspend license of any wholesaler in violation of the legislation.

DOR currently does not have field enforcement of tobacco laws. During the last session in response to Fiscal Note 3838-02 and again in Fiscal Note 1040-01 this session, it was noted that other states have brought forward a very important point. That point is that for a state to fully participate in the Master Tobacco Settlement that state must use due diligence to enforce their law and all areas of the agreement. DOR also noted that gray market cigarettes will impact the cigarette sales and therefore will impact the state's "diligently enforce" of the Master Tobacco Settlement if enforcement is not funded in this legislation.

The House Substitute and House Amendments include language that requires erroneously or illegally over-collected sales tax collected on cigarettes be refunded to the purchaser or remitted to the Department of Revenue, and allows the court to suspend the driving privilege of an individual who is under the age of eighteen and who attempts to purchase or possess cigarettes or other tobacco products.

DOR assumes the revenue impact is unknown, but a failure on Missouri's part to use due diligence to enforce the tobacco agreement could cause a loss of a portion of the settlement funds.

DOR assumes the Division of Taxation will be responsible for the revoking or suspension of license of the wholesalers if they are violating the cigarette statutes.

DOR has become aware that for a state to fully participate in the tobacco settlement agreement they must use due diligence to enforce the agreement and the state's tobacco laws. Therefore, DOR needs to have a field enforcement presence as well as the ability to fully track all payments from both the participants and those who chose not to participate and to make payments to the escrow fund. DOR notes the need to closely watch the grey market area of sales since it is

ASSUMPTION (Continued)

quickly becoming a black market.

To properly enforce Missouri's tobacco laws as required by Sections 142.900 to 149.215, the DOR will require 4 field agents and 2 tax audit analysts. The field agents will be responsible for closely checking each retailer of tobacco products in this state, seize unlawful product, and require that all taxes that are due are paid. The two tax audit analysts would be responsible for coordination of field agent activity, and an audit process to be certain that both the participants and non-participants make proper payments.

The Driver and Vehicle Services Bureau (formerly known as the Drivers License Bureau) assumes this proposal will affect any individual who is at least 15 years of age and not older than 18 years of age. The assumption uses 15 as the minimum age as these individuals are eligible for a temporary instruction permit at age 15 (beginning January 1, 2001).

The Driver and Vehicle Services Bureau obtained information from the Department of Health regarding school age tobacco use. This data was compared with school enrollment data obtained from the Department of Elementary and Secondary Education. Based on the evaluated data, the Driver and Vehicle Services Bureau estimates 66,655 students between the ages of 15 and 17 use tobacco products.

The Driver and Vehicle Services Bureau estimates that they will receive court orders to suspend 2.5% of these individuals. This will result in the receipt of 1,700 court orders requiring suspension of driving privileges.

The Driver and Vehicle Services Bureau will require 4 hours of overtime per day for a Clerk Typist II position in order to process this documentation. The processing will include verifying the information, creating computer records, mailing notices of suspension, microfilming documentation, responding to correspondence and telephone calls, and reinstating driving privileges.

Additional postage for notification of suspension and subsequent reinstatement can be controlled with existing budget resources.

Oversight notes that increases in fines which would go to school districts would be offset by reduced payment to those districts through the State Foundation Formula.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
GENERAL REVENUE FUND			
<u>Costs - Department of Revenue</u>			
Personal Service (6 FTE)	(\$115,140)	(\$141,622)	(\$145,163)
Fringe Benefits	(\$38,376)	(\$47,203)	(\$48,383)
Expense and Equipment	<u>(\$51,775)</u>	<u>(\$14,641)</u>	<u>(\$15,080)</u>
Total <u>Costs</u> - DOR	(\$205,291)	(\$203,466)	(\$208,626)
<u>Costs - Department of Public Safety</u>			
Salaries (10 FTE)	(\$308,607)	(\$379,587)	(\$389,076)
Fringe Benefits	(\$102,859)	(\$126,516)	(\$129,679)
Equipment and Expense	<u>(\$111,842)</u>	<u>(\$69,592)</u>	<u>(\$72,015)</u>
Total Costs - DPS	(\$523,308)	(\$575,695)	(\$590,770)
<u>Costs - Office of State Public Defender</u>			
Salaries (3 FTE)	(\$80,442)	(\$98,944)	(\$101,417)
Fringe Benefits	(\$26,811)	(\$32,978)	(\$33,802)
Equipment and Expense	<u>(\$31,942)</u>	<u>(\$13,056)</u>	<u>(\$13,446)</u>
Total Costs - SPD	(\$139,195)	(\$144,978)	(\$148,665)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(\$867,794)</u>	<u>(\$924,139)</u>	<u>(\$948,061)</u>
*Does not include unknown savings for possible reduced foundation formula payments.			
<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
SCHOOL DISTRICTS			
<u>Income -</u>			
Fines	Unknown	Unknown	Unknown
<u>Loss -</u>			
Reduction in state payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
TOTAL ESTIMATED NET EFFECT ON SCHOOL DISTRICTS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This bill bans the sale and distribution of "gray market cigarettes." Gray market cigarettes are cigarettes that are packaged for sale outside the United States and may not contain required health warnings and ingredient lists. These cigarettes may also be distributed under names and packages similar to cigarettes manufactured for sale in the United States. Persons are prohibited from affixing any stamp or meter impressions to gray market cigarettes. Persons violating this law are guilty of a class D felony.

The bill allows the Director of the Department of Revenue to revoke or suspend the license of a wholesaler who violates this law. In addition, the director may impose a civil penalty not greater than 500% of the retail value of the cigarettes involved or \$5,000. Gray market cigarettes sold or distributed in violation of this law are considered contraband and subject to seizure and forfeiture. In addition, violations are subject to remedies or penalties available for a violation of unlawful trade practices. The Director of Revenue may, when necessary, request the aid of the State Highway Patrol and all local police authorities to enforce these provisions. The Attorney General has concurrent power with the prosecuting attorneys of the state to enforce this law. (Section 149.200 to 149.212, RSMo)

This bill prohibits any refund to a cigarette retailer of sales tax illegally or erroneously overcharged on the amount of any cigarette excise tax included in the retail price of cigarettes unless the overcharge is refunded to the person who paid the tax. If the illegal or erroneous overcharge on the amount of any cigarette excise tax is not refunded to the person who paid the tax, it will be retained by the Director of Revenue. (Section 149.015, RSMo)

This bill gives the Division of Liquor Control authority to enforce laws related to the control and sale of tobacco and requires the division to submit an annual report on the effectiveness of cigarette control laws to the General Assembly. (Section 407.924)

This bill makes it illegal for a person under the age of 18 to purchase, attempt to purchase, or possess tobacco products. Persons under the age of 18 will have their tobacco products confiscated. For the second or subsequent violation a court may suspend such person's driver's license up to five days and may include community service. (Section 407.933)

This bill requires vendors to deny the sale of tobacco products to persons believed to be less than 18 and makes individual packages of tobacco products inaccessible to all persons under 18. The bill also adds a penalty for the Internet or mail sales of tobacco to anyone under the age of 18.

DESCRIPTION (continued)

(Sections 407.926 and 407.928)

This bill requires vendors to post a sign stating that it is a violation of state law for tobacco products to be provided to persons under 18, and it is a violation for persons under 18 to possess or purchase tobacco products. Currently, a sign is required stating only that it is illegal to sell tobacco products to persons under 18. (Section 407.927)

This bill bans the sale of individual packages of tobacco products unless they are sold through vending machines, behind a counter, or within the direct line of sight of the cashier. The bill requires that vending machines be equipped with a device that disables them until unlocked by a sales person. Vending machines located in areas where patrons must be over the age of 18 are exempted from this requirement. (Sections 407.928 and 407.931)

This bill requires purchasers of tobacco products to present prescribed identification upon request to demonstrate age. The bill makes it a misdemeanor subject to confinement and/or fine to reproduce, alter, modify, or misrepresent a driver's license or identification card. (Section 407.929)

This bill imposes a fine of \$250 and five-day suspension of a store's license to sell tobacco products for the fourth or subsequent violation of the statutes banning the sale or distribution of tobacco products to persons under the age of 18. In addition, the store will be fined in the same amount as the individual wrongfully selling the tobacco products. (Section 407.931)

This bill imposes additional penalties on the owner or operator of the outlet selling tobacco products to persons under 18. For the first offense, the Division of Liquor Control will issue a reprimand; for a second offense, the division will prohibit the sale of tobacco products for one day; for a third offense, the division will prohibit the sale of tobacco products for 2 days; and for the fourth and subsequent offense, the division will prohibit the sale of tobacco products for 3 days. The penalties will not be imposed on the owner or operator if certain circumstances involving the training of employees in the sale of tobacco to minors can be shown. (Section 407.931)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration - Budget and Planning
Department of Public Safety
Office of State Courts Administrator
Office of the State Public Defender
Office of Prosecution Services
Office of the Attorney General
Department of Corrections
Department of Revenue

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large initial "J" and a cursive "Jarrett".

Jeanne Jarrett, CPA
Director
February 28, 2001